

### Publishers' Groups to File Brief Supporting Former C.I.A. Agent

WASHINGTON, July 9 (AP) — ~~The Association of American Publishers~~ says that it plans to file a "friend of the court" legal brief supporting the right of Frank Snepp, a former agent of the Central Intelligence Agency, to write about the C.I.A.'s operations. The brief will be filed in the United States Court of Appeals for the Fourth District.

Last week a Federal judge ordered Mr. Snepp to surrender his profits from the book "Decent Interval," which details C.I.A. activities in the last days of the Vietnam War, and to get agency approval before writing anything further about the agency. Judge Oren Lewis said that Mr. Snepp had breached a contract with the agency requiring prior approval by the agency of publications.

The publishers' groups says that the C.I.A. contract violates Mr. Snepp's First Amendment rights to speak freely on issues of public importance and allows the Government to censor nonclassified information.

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## First Amendment Appeal Readied

# Judge Orders Ex-CIA Agent To Forfeit Gains From Book

By Brian Murchison  
Special to The Washington Star

"This is not a First Amendment case," District Court Judge Oren R. Lewis snapped to American Civil Liberties Union lawyers defending Frank W. Snapp III during the ex-CIA agent's two-day trial last month.

And the judge's written opinion, handed down yesterday at the District Court in Alexandria, reiterated his view that the Snapp litigation did not reach a constitutional plane, but was a simple contract case.

In the traditional language of contract law, the judge ordered Snapp to pay in damages to the U.S. government all proceeds from his book, "Decent Interval," an unauthorized account of the U.S. evacuation of South Vietnam in 1975. The book alleges deception and incompetence on the part of the CIA.

Snapp said he will wait to read the language of the injunction before deciding if he can "in conscience adhere to it."

HE ALSO DECLARED that he is at work on two books dealing with intelligence activities, one a novel, and that he is proceeding "with all speed."

The Association of American Publishers, a New York-based trade association of more than 300 publishing houses, said yesterday that "the government's action against Snapp represents one of the most sweeping attempts to date by the executive branch to interfere with the public's First Amendment right to know about the workings of government."

The association, whose members include Random House, Snapp's publisher, said that enforcement of the CIA contract would impose an unacceptable prior restraint on the public's reception of "truthful, non-classified information."

The judge's opinion said that First Amendment arguments similar to Snapp's had been properly rejected in an earlier case before the Fourth Circuit Court of Appeals.

IN THAT CASE, U.S. v. Marchetti, Chief Judge Clement Haynsworth had ruled that agents planning to disclose classified information must submit their writings to the CIA for prior approval.

Snapp's chief ACLU lawyer, Mark Lynch, argued during Snapp's trial that the Marchetti case was applicable because Snapp has not been accused of disclosing any classified material by the government.

Lynch also argued that, in Snapp's case, the CIA wanted to have prior approval of the release of much less privileged, non-classified information, and that such a demand was unconstitutional.

In his decision, Lewis emphasized the contract issues, declaring that Snapp breached his contract of employment with the CIA, and that Snapp violated a "fiduciary duty" owed to the U.S. government as his employer.

Lynch said yesterday that the constitutional claims will be on board when Snapp takes his appeal to the Fourth Circuit Court of Appeals in Richmond.

LYNCH WILL ARGUE that Snapp's First Amendment rights to speak and to publish were violated by the CIA's secrecy rule requiring an employee to submit for prior approval any writings which disclose unclassified information.

"This kind of prior restraint in the absence of presidential or congressional authorization is unconstitutional," Lynch said. "Even if Congress passed a statute authorizing this, I'd still argue it was unconstitutional."

Because of the judge's clear position on the matter during the trial, government attorneys were free to emphasize contract arguments and disregard the First Amendment claims made in Snapp's brief.

Snapp himself said yesterday that his lawyers would argue in Richmond that "no American citizen should be deprived of freedom of speech simply for criticizing the government."

MEANWHILE, Snapp's lawyers are awaiting the arrival of the injunction which was ordered by the judge and will be drafted by the Justice Department.

The injunction will impound all present and future proceeds from "Decent Interval," Snapp said during the trial that he had accumulated some \$60,000 thus far in book sales and sale of paperback rights.

Snapp will also be enjoined "from any further violation of his secrecy agreement," and will be required to submit to the CIA "any manuscript" which he writes in the future about

Under terms of Lewis' order, Snapp's proceeds will be placed in a trust established by the court and, barring reversal by the appeals court, will ultimately be turned over to the Treasury Department.

Reacting to Lewis' opinion in the case, Snapp said that he felt the proceedings in District Court had "looked like a stacked deck" against him from the outset, and charged that Lewis "had made up his mind before he went to court."

SNEPP ALSO labeled Lewis' handling of the trial "absolutely outrageous."

Lewis had denied Snapp a jury in the trial, saying that there were no issues of fact to be decided by a jury. The 75-year-old judge had also taken an unusually active role in the proceedings, frequently interrupting Snapp's testimony and rephrasing questions to Snapp and other witnesses.

The government is seeking all the book's royalties, and it is welcome to them, Snapp said yesterday. "But the royalties won't buy back the honor the CIA lost (in its evacuation of Saigon in 1975) and they won't purchase for this country freedom from honorable criticism."

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## AAP Asks Law to Prevent Clandestine Ties to Media

U.S. intelligence agencies should be prohibited by law from disseminating propaganda in the United States and establishing clandestine relationships with media organizations, journalists or editors, the Association of American Publishers recently told two congressional committees investigating the intelligence community.

"Such activities and relationships constitute an intolerable overreaching by the government, undermining the fundamental premises of a free press and a free society," the AAP said in a statement sent to each member of the Senate Select Committee on Intelligence and its House equivalent, the Armed Services Subcommittee on Intelligence.

The AAP policy was developed in the aftermath of revelations by the Senate committee headed by Sen. Frank Church (D., Idaho) that prior to 1967, the Central Intelligence Agency had subsidized or itself produced more than 1000 books, approximately 25% of them in English. A significant number of them were reviewed and marketed in this country, according to the committee, and although it did not reveal the particulars on any of these book publishing activities, the clear implication was that some of the covert book projects were undertaken with the unwitting assistance of American publishers (PW, January 16).

The Church committee expressed concern that clandestine use of media organizations threatens American institutions "whose integrity is critical to the maintenance of a free society." It recommended that the CIA be barred by law from subsidizing the writing or production or distribution in the United States of any book, magazine, article, publication, film or video or audio tape unless publicly attributed to the CIA. "Fallout" in the sense of intended or unintended re-entry of agency propaganda into the United States should also be prohibited, the Church committee said.

On January 24, President Carter issued an executive order containing a variety of directives to guide intelligence agencies and activities. This order, superseding one from President Ford, would not, however, preclude a

charter and guidelines for intelligence agencies now being formulated by the successor to the Church committee chaired by Sen. Birch Bayh (D., Ind.). Its proposals will be introduced as legislation in the next several weeks.

The AAP told the Bayh group that it endorsed the recommendations of the Church committee regarding the media with these provisos:

- that they be made applicable not only to the CIA but to all U.S. intelligence agencies;
- that any penalties for violation of a prohibition against the subsidized writing or production of books, articles and films apply only to the intelligence agencies and their employees;
- that the prohibition not be construed to prevent or support any injunction or other restraint of publication by the press or private citizens of any information they receive and sponsor for publication;
- that the prohibition not be used to prevent scholars, academics or others from independently writing and publishing unclassified materials on subjects related to their intelligence agency work or research.

S.W.

# AAP, Ford Sponsor "Casebook" Conference on First Amendment

On April 18-20 the Association of American Publishers and the Ford Foundation jointly sponsored a Conference on Book Publishing and the First Amendment, the first of its kind to be held by the two groups, at the Harrison Inn, Southbury, Conn. The conference was attended by judges of the federal and state courts, publishers and editors, and writers, lawyers, librarians and others concerned with the issue, all of whom were present by invitation. Structurally, the group was broken down into 28 "participants" and a larger number of "observers." To foster the freest exchange of ideas, all discussion was "without attribution"—a form of prior restraint even the journalists present cheerfully agreed to.

The structure of the three formal sessions followed that used in the more rigorous law schools. Each was led by a professor of law expert in a particular field and skilled in what the sponsors called "the Socratic method." The participants were given hypothetical statements of fact contained in three hypothetical "casebook studies," but related to real situations that publishers, writers and librarians have come up against, in and out of court. The professor asked questions about the given situations, sometimes calling upon various participants by name, sometimes giving the floor to hand-raising volunteers. As the answers came, he carried the inquiry further and deeper, changing the facts and playing virtuoso variations on his theme. There was general agreement that each of the professors had done a superb job.

Most of the questions were not easily answered; to many of them, it seemed, the professors themselves had no certain answer, or even an answer considerably short of certain. The "Socratic" label was not quite accurate. Socrates had his own conclusions to which he neatly drew his straight men: the professors sought rather to articulate and narrow issues and to suggest avenues of inquiry.

The result was a good deal of illumination. Problems that publishers, editors and writers face were spread out before the judges present. Most of the judges had encountered some such problems in their courtrooms, but the conference gave them a different perspective and perhaps a broader understanding of the realities of publishing than can be derived from the hemmed-in facts of a case in court. At the same time, the other participants and observers gained an appreciation of the difficulties judges face in deciding the issues that arise at the interaction of First Amendment freedoms with other guarantees of the Constitution. It is not easy, the conference

made plain, to resolve the tensions created by opposing vectors of different but equally legitimate social policies.

The first "case" dealt with libel, privacy and confidential relationships; the second with the selection and rejection of books used in schools and libraries; the third with the publication of information the government wants to keep secret. There was a wealth of stimulating discussion which cannot be reported briefly. The sponsors are preparing a summary which will be made available to those present and, upon request, to others. A few points may be noted:

An interesting aspect of the first session was the publishers' inclination to impose upon themselves restraints more confining than the law demands. One of the lawyers mentioned that with the new constitutional defense announced in *Times v. Sullivan* and expounded in subsequent cases, a publisher might, in many situations where a public figure is involved, avoid liability by closing his eyes to anything outside the manuscript—that he would often be safer if he did not check what his author wrote. Several publishers expressed an unwillingness to take advantage of this development in the law. The professional standards of publishing, it developed, may dictate more severe inhibitions in the field of libel and privacy than the law does.

## Militancy: Trade vs. Text

The second "case" focused on conflicts with school boards, state agencies and local communities. There seemed to be a difference here between the textbook publishers and the trade book publishers; the former evidently regarded their problems as less serious than the latter (or the professor) did. It was pointed out that some agency of government has to be responsible for selecting the materials used in the public school system, and that so far as the First Amendment is concerned, an official refusal to use a particular book does not amount to a general suppression of that book. The trade book publishers (at least those who were heard from) demonstrated a more aggressive attitude and a greater eagerness to explore the possibilities that resort to law might offer. One lawyer-participant advanced the notion that, in addition to whatever effect the First Amendment might have, other provisions of the Constitution might supply a basis for legal attack on censorious boards and agencies, specifically the due process and the privileges and immunities clauses. The suggestion was that whatever may have been the situation 200 years

ago, our society has grown so complicated that there is a constitutional right to a decent education. If 20th-century democracy is to function, the argument ran, a certain level of knowledge must be achieved by its citizens; and this preparation for participating in government is, correlatively, the right of future voters. Hence arbitrary or capricious selection or rejection of educational materials might be attacked as state action violative of the Fourteenth Amendment.

The final "case" presented a hypothetical situation in which an anonymous phone caller says he works for the CIA, has copies of secret, politically explosive CIA documents, and offers to sell them to a publisher for \$100,000. In the course of the discussion, one of the publishers addressed himself to the criminal aspects of the situation, and to what he felt was the apparent approval of it on the part of some of his colleagues. "I feel like a Boy Scout in a brothel," said the publisher.

"Is that good or bad?" asked the professor. On this last question, as on many others, the conference was unable to achieve consensus.

The judges were active and impressive participants in all three sessions, but they became especially vocal in the third. The publishers and lawyers who spoke argued strongly against prior restraints. The judges, in contrast, emphasized the importance of having enough time to reach a sound decision, and contended that the brief stay imposed by a temporary restraint ordinarily had little effect on the public's need to know—that in the usual situation it made little difference in terms of public welfare whether the book came out immediately or one week later. One of the judges, who had an effective down-to-earth manner, summed up the judicial position by asking, "What's the hurry?"

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# Publishers Warned of Threats to U.S. Freedoms

By HENRY RAYMONT

The Association of American Publishers held its fall meeting yesterday amid warnings that Government censorship and radical pressure groups are increasingly threatening the nation's First Amendment freedoms.

A report by the association's Freedom to Read Committee likened the situation to the McCarthy era of the early nineteen-fifties, "when attacks on intellectual freedom by the Government and various pressure groups were at their peak."

Senator Sam J. Ervin Jr., chairman of the Senate Subcommittee on Constitutional Rights, in a speech prepared for the closing dinner at the end of the day-long meeting at the Baltimore Hotel, said:

"If America is to be free, her Government must permit her people to think their own thoughts and determine their own associations without official instruction or intimidation."

## Moralists Assailed

At a luncheon session the association heard Homer D. Babbridge Jr., president of the University of Connecticut, assail what he called "a virulent new version" of American moralists, who he said were interfering with free cultural exchanges among nations.

He cited the Jewish Defense League's disruption of concerts by Soviet artists, groups on campuses who thwarted speakers from Greece and Portugal and critics who urged a pull-out from Olympic competitions in South Africa because of that country's racial policies.

Senator Ervin's speech was the high point of a day in which more than 300 chief ex-

ecutives from literary and educational publishing houses and university presses discussed such diverse subjects as international copyright problems, dwindling funds for libraries and Government pressures against the publication of controversial materials.

In an extensive analysis of the First Amendment, Senator Ervin, a North Carolina Democrat, developed arguments he has been using against the Nixon Administration on such issues as the use of lie detectors on Federal employees, Army surveillance of private citizens and President Nixon's Executive order expanding the mandate of the Subversive Activities Control Board.

## Concern Is expressed

The Senator's speech reflected a concern that leading members of the publishing community have frequently expressed and the was often a factor in yesterday's panel meetings and general discussions — namely, that Government attempts to interfere with such publishing ventures as the Pentagon study of the Vietnam war or the dissemination of radical books in libraries represented a threat to freedom of speech and press.

"It is a critical fact that we are now faced with the necessity of defending the First Amendment," W. Bradford Wiley, chairman of the association, said at a morning meeting. "Nothing like this had happened since the days of Senator Joseph R. McCarthy."

Kenneth D. McCormick, vice president of Doubleday and chairman of the association's Freedom to Read Committee, reported that, among other activities this year, the committee had protested a contempt citation against the Columbia

Broadcasting System for refusing to supply out takes, or unused film, from its documentary "The Selling of the Pentagon" and had filed a brief opposing the Government action against The New York Times and other newspapers for publishing the Pentagon Papers.

Mr. McCormick said the association would also file a brief in behalf of the Rev. Phillip F. and the Rev. Daniel J. Berrigan, supporting the rights of Federal prisoners to disseminate their writings and recordings to publishers and the public.

## Pressures Held Widening

Declaring that pressures from private groups to have certain titles removed from public and school libraries were no longer confined to pornography and sex education, he said:

"It is more and more the book that really talks about the war and gives two sides of it, that presents the race problem as more than an unfortunate spat between two regions, that presents the United States as a country that's been right sometimes and wrong at others."

Other speakers who expressed concern that the political acrimony was interfering with the free exchange of ideas were John C. Frantz, executive chairman of the National Book Committee; Whitney North Seymour, a former president of the American Bar Association, and Harrison E. Salisbury, assistant managing editor of The New York Times.

In introducing Senator Ervin, Robert L. Bernstein, president of Random House, who is vice chairman of the association, noted that the Senator's subcommittee planned to start hearings on Sept. 28 on "the meaning of the First Amendment's prohibition against abridgement of freedom of the

press" and that publishers, newspaper editors and government officials had been invited to testify.

Pounding away at a favorite theme, Senator Ervin said that the First Amendment "is based upon an abiding faith that our country has nothing to fear from the exercise of its freedom as long as it leaves truth free to combat error."

If the right to express dissent is respected, he declared, "violent revolution has no rational or rightful place in our system."

Mr. Ervin, a political conservative who is considered the leading constitutional law expert in the Senate, said President Nixon's order strengthening the mandate of the Subversive Activities Control Board was "beyond the constitutional power of the President," too broad to have any legal value and in violation of the First Amendment.

Mr. Nixon's order, issued July 2, gave the board the power to hold hearings to help determine which organizations should be classified as subversive by the Attorney General.

Before the order, the board, an independent, semijudicial agency created in 1950, had had little work to do for several years.

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